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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/324,368	06/02/1999	KOICHI NAGAOKA	MORJ-2516	1449

7590 05/01/2002

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SUITE 624  
TROY, MI 480843107

EXAMINER
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MULLIS, JEFFREY C

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 05/01/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

F.D-14

<b>Office Action Summary</b>	Application No. 09/324,368	Applicant(s) NAGAOKA ET AL.	
	Examiner Jeffrey C. Mullis	Art Unit 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 January 2002.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3, 8-12 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 8-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12 14-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 12 and 14-16 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ryan (WO 98/50611).

Ryan et al. disclose a non-woven polylactide material (page 37 lines 1-7) which may be produced using homopolylactides in Example 1 on page 42. Applicants' birefringent values are disclosed at page 24 lines 30-33 and applicants' shrink gauge values are disclosed at the paragraph bridging pages 24 and 25. The drafting speed disclosed and argued by applicants to be critical to obtaining applicants' characteristics are disclosed

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in Example 1 of the patent. While applicants argue that the specific process of patentees results in more stress at lower drafting speeds, patentees disclose drafting speeds which are in some cases lower than those of applicants in the Figures and at the very least disclose speeds which are at the lower range of the range disclosed to be critical by applicants and therefore it would reasonably appear that applicants' characteristics would be inherent since draft materials generated at lower drafting speeds would be compensated with higher strain. Nucleating agents may be present at page 22 line 28.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Applicants' arguments filed 1-15-02 have been fully considered but they are not deemed to be persuasive.

Claims 3 and 8-11 are still pending. It is noted that the Examiner Interview Summary indicates that claims 3 and 8-11 would be cancelled. However, such cancellation was predicated on the allowance of the case since Examiner's amendments are not performed except at allowance. Applicants may cancel these

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claims or the Examiner will cancel them at allowance since these claims are withdrawn from consideration based on being drawn to an invention non-elected without traverse.

Applicants' arguments regarding the rejection under 35 U.S.C. § 112 second paragraph are moot since this rejection has been withdrawn.

With regard to Ryan, applicants argue that Ryan discloses a melt spinning process while the amended claims are drawn to a product produced by a spun bonded process and that for a given drafting speed filaments formed in a melt spinning process experience larger drafting stress. However it appears to the Examiner that since the reference discloses drafting speeds which may be at the lower limit of applicants' range as well as some below applicants' lower limit of drafting speed that the decreased drafting speed would compensate for the higher stress, i.e. the lower drafting speed examples of the reference would have a stress equivalent to that of filaments formed by a spun bonded process at higher drafting speeds within applicants' critical range.

Applicants argue that only Example 13 refers to a spun bonded non-woven fabric. However the instant claims are drawn to a product, not a process and it is not clear that a spun bonded product is any different from a product produced by a melt spinning process aside from those characteristics inherently

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resulting from different drafting speeds which as set out above may be varied in the reference.

**THIS ACTION IS MADE FINAL.** Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication should be directed to Jeffrey Mullis at telephone number (703) 308-2820.

J. Mullis:cdc  
April 30, 2002

Jeffrey  
Primary Examiner  
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